

East Contra Costa County Habitat Conservation Plan Association

HCPA Coordination Group Meeting

Thursday, September 18, 2003
1 p.m. to 3 p.m.

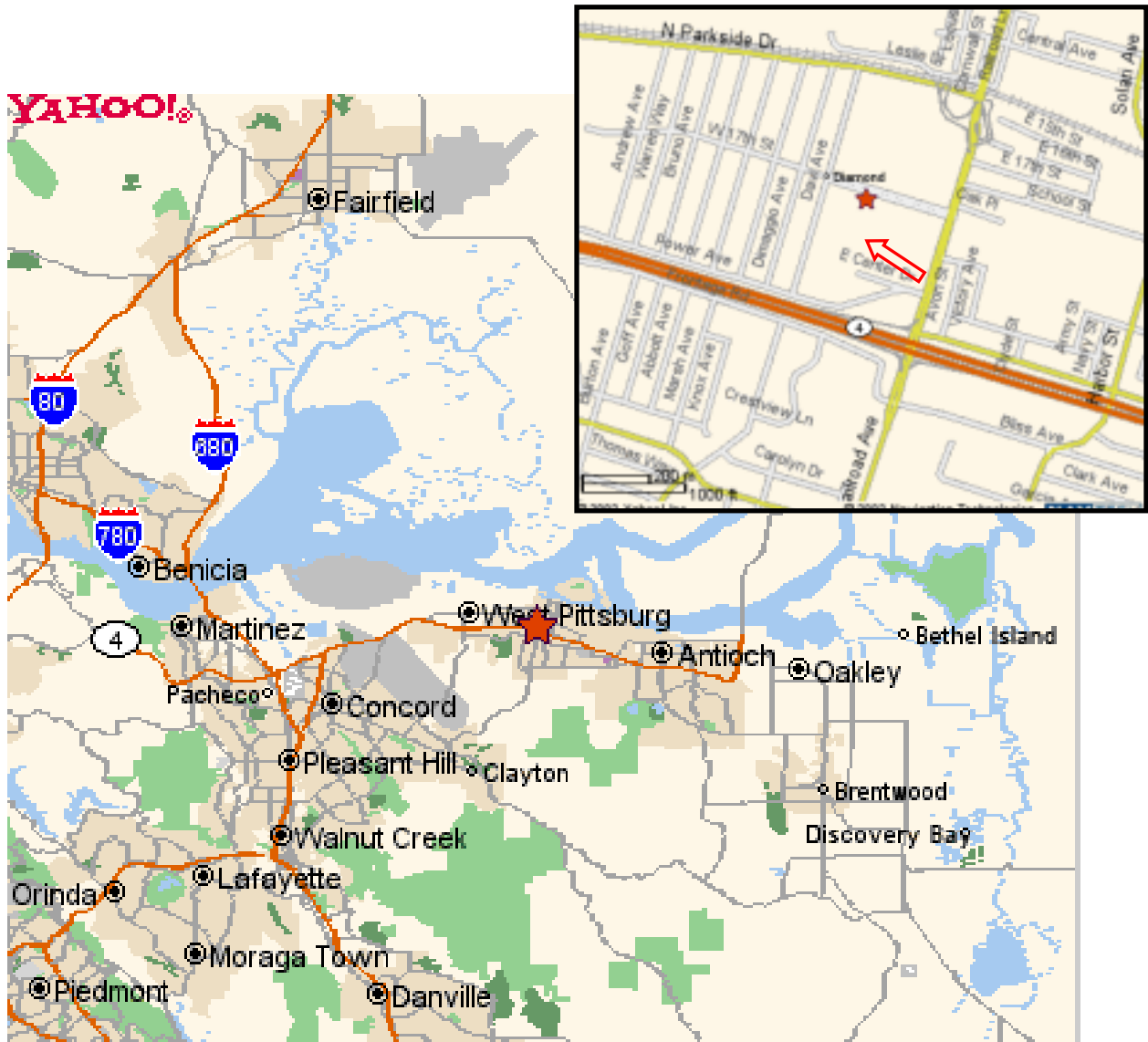
City of Pittsburg Council Chambers
65 Civic Drive in Pittsburg, 3rd Floor
(see map on reverse)

Agenda

- 1:00 Introductions. Review contents of meeting packet.
- 1:05 Review and approve Draft Meeting Record of the August 21, 2003 Coordination Group meeting.
- 1:10 Updates:
 - Check-list of recent points of agreement among the Coordination Group that will be added to the Framework document
 - Wetlands permitting
 - Discussion topics for the next several meetings
 - October: adaptive management, assurances, revised impacts estimates, O&M & admin cost estimates, funding implementation
 - November: preliminary, partial draft of HCP/NCCP
- 1:30 Continued, report from FWS/CDFG on policy/regulations and Principles of Participation
- 1:40 Continued, general approaches to structuring implementation of the HCP/NCCP (see revised Figure 7-3, attached)
- 1:50 Preliminary analysis of funding sources for implementing the HCP/NCCP (see memo attached; you may also want to refer to the economics memos in the July and August packets)
- 2:30 Review preliminary draft material from the Assurances chapter of the HCP/NCCP (attached).
- 2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburg Council Chambers (usually 3rd Thursdays):
 - Thursday, October 16, 1 p.m. to 3 p.m.
 - Thursday, November 20, 1 p.m. to 3 p.m.
- 2:55 Public comment.
- 3:00 Adjourn.

Times are approximate. If you have questions about this agenda or desire additional meeting materials, you may contact John Kopchik of the Contra Costa County Community Development Department at 925-335-1227.

Map and Directions to Pittsburg City Hall 65 Civic Drive



Directions from I-680, Central County

- 1) Take Hwy 4 East toward Antioch/Stockton
- 2) Follow Hwy East over the hill (Willow Pass)
- 3) Exit Railroad Ave. (the 2nd exit after the hill)
- 4) At the end of the exit ramp, turn left on Railroad Ave.
- 5) Turn left at the second intersection, East Center Drive (signs for various city offices will also point you this way)
- 6) Immediately bear right into the large parking lot next to City Hall
- 7) Meeting is on the 3rd floor

Directions from Antioch and points east

- 1) Take Hwy 4 West toward Martinez/Richmond
- 2) Exit Railroad Ave.
- 3) At the end of the exit ramp, turn right on Railroad Ave.
- 4) Turn left at the next intersection, East Center Drive (signs for various city offices will also point you this way)
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DRAFT MEETING RECORD

East Contra Costa County Habitat Conservation Plan Association (HCPA) Coordination Group Meeting

Thursday, August 21, 2003
1 p.m. to 3 p.m.

City of Pittsburg Council Chambers

1:00 Welcome and Introductions. Meeting attendees introduced themselves. Coordination Group members in attendance were:

Chris Barton, City of Pittsburg
Bradley Brownlow, Morrison & Foerster
Mike Daley, Sierra Club, Bay Chapter
Fran Garland, CCWD
Jim Gwerder, CCC Citizens Land Alliance
John Kopchik, CCC Community Dev.

John Slaymaker, Greenbelt Alliance
Dick Vrmeer, California Native Plant
Society
Mike Vukelich, CCC Farm Bureau
Carl Wilcox, CA Dept. of Fish and Game
David Zippin, Jones & Stokes, Inc.

Also in attendance: John Hopkins, Institute for Ecological Health, and Cheryl Morgan

1:05 Review and approve Draft Meeting Record of the July 17, 2003 Coordination Group meeting. The Draft Meeting Record was accepted with the following edit to the line fourth from the bottom of page one: replace “production of endangered species in the preserve” with “production of covered species in the preserve”.

1:10 Updates:

- **Draft of NCCP Planning Agreement available online; comments due Sept. 2, 2003:** John Kopchik explained the purpose of the Planning Agreement.
- **Wetlands permitting:** John Hopkins explained the 6-county effort to explore with the Army Corps of Engineers and others opportunities for integrating wetlands permitting with HCPs.
- **Discussion topics for the next several meetings**
 - **September: O&M & admin cost estimates, funding implementation**
 - **October: adaptive management, assurances, revised impacts estimates**
 - **November: preliminary, partial draft of HCP/NCCP**

1:30 Report from FWS/CDFG on policy/regulations and Principles of Participation: Carl Wilcox explained that CDFG felt the Principles of Participation were appropriate for their purpose. He commented on several of the principles. He indicated that the question of enabling individual permittees to opt out of the HCP was up to the local agencies, but that CDFG intended to the NCCP to be the primary permit vehicle for the area. Bradley Brownlow indicated that it was important for him to be able to report clearly to his constituency whether the NCCP would be the only mechanism for receiving a permit or not, and asked that Carl put his comments in written form. Carl agreed.

1:45 Permit Area principles and approach (see draft memo, attached): John Kopchik went over the permit area memo in detail. The group discussed the memo at length. Generally, members felt that linking the permit area to land-use policies, making it flexible, and scaling conservation somewhat with impacts was a step forward, though many concerns

were expressed with the approach. Mike Daley had serious concerns with the wording of the permit area principles. John Kopchik suggested omitting the principles, but others felt they were helpful. John Kopchik offered to try to work with Mike to adjust the language of the principles to alleviate his concerns. Another concern related to understanding what the implications of a flexible permit area would be. Others expressed concern that scaling conservation would be hard to work through with the regulatory agencies.

- 2:00 General approaches to structuring implementation of the HCP/NCCP (see attached figures):** Drafts of Figures 7.1 and 7.2 were discussed. Dick Vrmeer suggested that perhaps the details of the implementation structure (such as, which tasks were done by staff, which by consultant; would the HCP manage its own land or rely on others?; etc.) could be sorted out at the time of implementation by the body doing the implementation. The notion of the implementation structure evolving over time to fit the task was attractive to many in the group. This suggestion was supported by the general consensus of the group with the following caveats: adaptive management needs could not be impeded and issues of trust—between stakeholders and existing institutions that could conceivably play a role in the HCP implementation structure—would need to be addressed before any “blank check” could be issued.

Regarding Figure 7.1, the following comments were suggested:

- Should be an arrow between science panel and governing board
- Public input should include formation of a standing advisory body
- There was some discussion as to whether the standing advisory body should have fixed membership or be completely flexible and open to all interested parties, with the pros and cons of each approach discussed at length. The structure should strive to blend the two approaches to ensure diverse and balanced representation will also ensuring open participation
- There needs to be a venue for participation of a variety of groups. Those mentioned include the RCD, NRCS, rangeland experts, forestry experts, agricultural experts.

- 2:20 General approaches to funding the HCP/NCCP (see memo attached):** John Kopchik provided a 2 minute summary but there was no time for discussion.

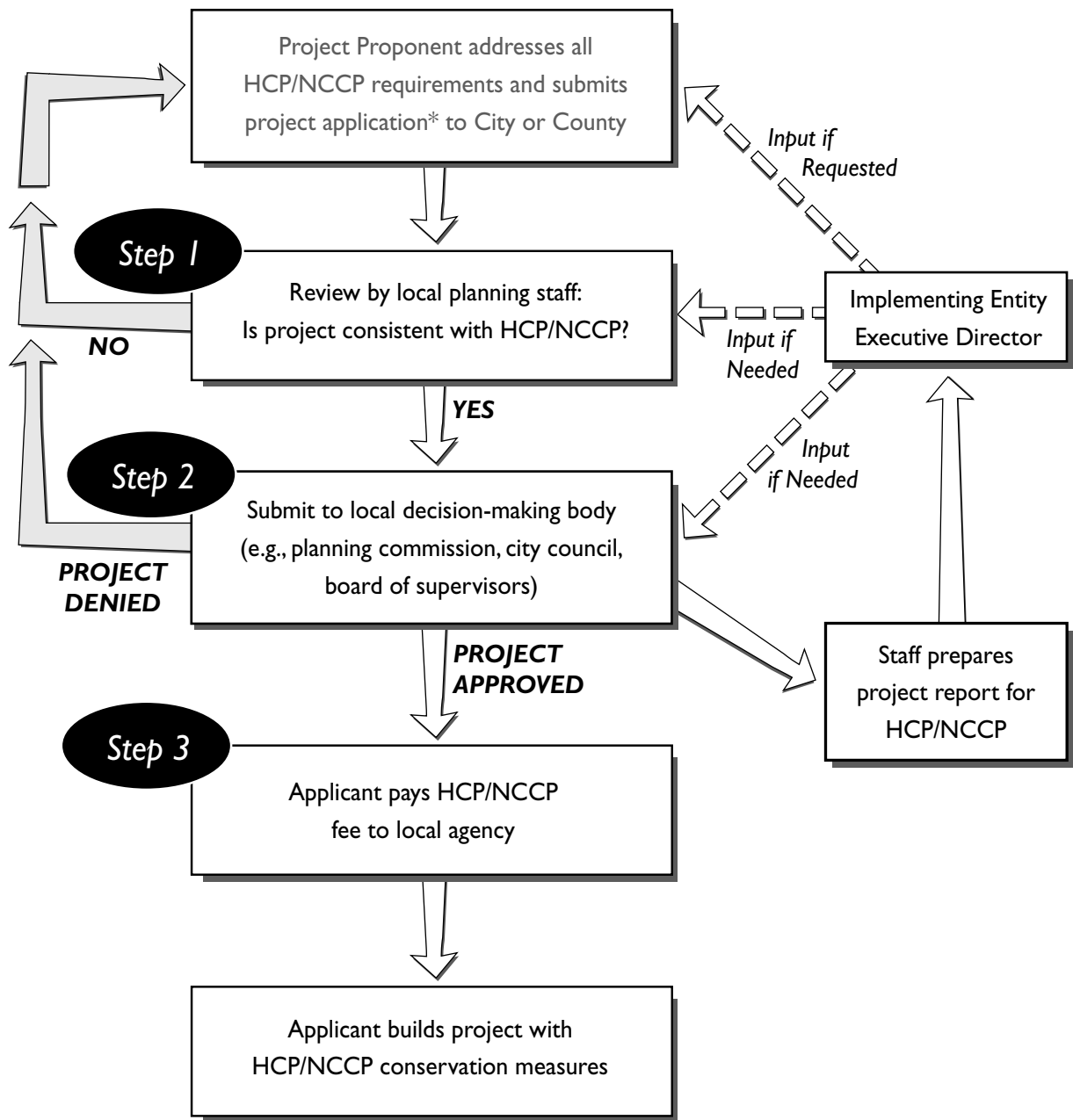
- 2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburg Council Chambers (usually 3rd Thursdays):**

Thursday, September 18, 1 p.m. to 3 p.m.

Thursday, October 16, 1 p.m. to 3 p.m.

- 2:55 Public comment.** None.

- 3:00 Adjourn.**



* For example: required survey report, design elements from HCP/NCCP incorporated into project, avoidance measures planned.

MEMORANDUM

To: East Contra Costa County Habitat Conservation Plan Association

From: Teifion Rice-Evans and Jason Tundermann

Subject: Evaluation of Funding Source Options; EPS #11028

Date: September 10, 2003

This technical memorandum further explores the funding sources of the East Contra Costa NCCP/ HCP (the Plan). It builds on prior memoranda and considers the level of Plan support that may be provided by specific entities through funding or land acquisition. It also evaluates options for the level of developer mitigation fees and identifies funding gaps under different funding scenarios. To the extent that scenarios result in funding gaps, additional funding sources will need to be identified. This evaluation continues to work with hypothetical cost numbers, until the cost estimates have been finalized. The hypothetical numbers used are, however, within the general range of expected costs.

ANALYTICAL ASSUMPTIONS

The analysis is driven by estimates of both current land use in East Contra Costa County and estimates of Plan-related permitted development, conservation acres, and associated costs. The assumptions used in this analysis are shown in the **Tables 1 and 2**.

Table 1: Land Development and Conservation in the HCPA's 174,000 Acre Inventory Area

Item	Developed Areas (acres)*	Conservation Areas (acres) **	Ratio (conserved/developed)
Existing	57,000	44,000	0.77
Plan-Related (next 30 years)	11,000	30,000	2.73
Total (after 30 years)	68,000	74,000	1.09

*In both the Existing and Plan-Related categories, Developed Areas include all urban development and 50% of irrigated agriculture, to account for the partially diminished habitat value of agricultural land relative to pristine habitat, as mapped in the HCP/NCCP.

**Conservation Areas include parks and conservation easements.

Table 1 shows the current developed acres and the acres permanently conserved by any and all entities in the Plan Study Area at the present time. The historical ratio of conservation to existing development is 0.77. Preliminary Plan estimates include incidental take permit coverage of an additional 11,000 acres of development and require conservation of an additional 30,000 acres to



take the total conservation area to 68,000 acres. This represents a net new ratio of 2.73, or an overall ratio of 1.09.

Table 2: Hypothetical Plan Cost Summary

Cost Category	Total	Avg. per Conserved Acre
Acquisition	\$210m	\$7,000
OM&M	\$90m	\$3,000
Total	\$300m	\$10,000

Table 2 shows approximate, hypothetical costs associated with Plan implementation. Acquisition costs refer to fee title and easement land acquisitions. OM&M costs refer to operations, management, and maintenance costs, and include restoration costs for the purpose of this analysis.

NON-FEE FUNDING

There are a number of entities and funding sources beyond new development that will continue to conserve land in East Contra Costa County and that may therefore contribute to the HCP's conservation requirements, presently estimated at 30,000 acres of additional conservation and defined by a series of habitat and location attributes. This section identifies opportunities for the HCP to meet some of its requirements by partnering with other contributing entities on new and continued conservation efforts.

Some of these potential contributions will come in the form of grants or other funding for land acquisition, while others will represent direct land purchases by other entities that may be "counted towards" total acquisition goals under the Plan (provided the acquired land is managed according to plan provisions). It is assumed that all financial contributions would be subject to matching HCP funds used towards collaborative acquisition. Four of these potential contributing sources are described below, with each measure's potential contribution to total land acquisition goals summarized in the attached **Table 3**. All contributions from these other entities and sources are focused on the acquisition component of the Plan. While some entities, EBRPD for example, may manage and maintain the land they acquire, funding for such operations may need to be raised through the Plan.

CONTRA COSTA COUNTY OPEN SPACE FUNDING MEASURE

The Contra Costa County Board of Supervisors approved the concept of an open space and agricultural protection funding measure in October, 2002. While this measure has yet to be formally approved for referendum, County staff have formulated preliminary spending priorities by project type and location. A number of potential priority areas – including "Flagship Opportunity Areas" and "Regional Priority Projects" – lie within the proposed HCP boundaries, and have been identified for potential future open space funding. The analysis below assumes that future land within the HCP area acquired for open space preservation using County Open Space Measure funds would contribute to overall HCP conservation and land acquisition goals.



Table 3
Potential Acquisition Funding from Non-Development Sources
East Contra Costa NCCP/ HCP

Item	Projected Conservation Acres	%	Projected Dollar Value (1)	%
Overall Plan	30,000	100%	\$210,000,000	100%
Contra Costa County Open Space Measure (2)	3,857	13%	\$27,000,000	13%
Projected Section 6 Grant Funding (3)	1,429	5%	\$10,000,000	5%
Projected Public/Land Trust Land Acquisition (4)	7,600	25%	\$53,200,000	25%
Projected Byron Airport Land Acquisition (5)	<u>800</u>	<u>3%</u>	<u>\$6,500,000</u>	<u>3%</u>
Total Projected Contributions from Other Entities	13,686	46%	\$96,700,000	46%
Remaining HCP Requirements	16,314	54%	\$113,300,000	54%

(1) Unless otherwise noted, this matrix assumes an average land acquisition cost of \$7,000 per acre.

(2) Includes funds allocated for all "Flagship Opportunity Areas" and "Regional Priority Areas" identified within the proposed HCP boundaries. Assumes all funds are used for land acquisition only.

(3) Assumes East Contra Costa HCP receives approximately \$350,000 of section 6 funds each year. This estimate is approximately one-half the average annual amount received by other Northern California regional HCPs over the past 3 years. This adjustment was made to develop a conservative estimate, and to account for the likely additional future demand for section 6 funds.

(4) Assumes public agencies and private land trusts continue to acquire conservation land within the HCP area for the next 30 years at half of the EBRPD's historical acquisition rate, or approximately 250 acres per year.

(5) These acres represent land targeted by Byron airport within the HCP area to satisfy airport "clear zone" needs. Acquisition cost estimates were provided by airport staff.

Sources: Respective Entities; Contra Costa County; Economic & Planning Systems, Inc.

Approximately \$27 million in Open Space Measure funds have been allocated to priority projects that lie within the Plan Study Area. As shown in **Table 3**, these funds represent about 13 percent of overall acquisition funding requirements and could be used to acquire approximately 3,800 acres at average land costs. For the Open Space Measure to represent a viable funding source, the County would have to continue to develop the funding measure and submit it to voters, subject to approval by a 50 percent weighted majority.

USFWS SECTION 6 FUNDS

The U.S. Fish and Wildlife Service annually provides significant funds in the form of section 6 grants to local jurisdictions developing HCPs. The section 6 grant program is generally divided into three funding categories: Planning Assistance, Land Acquisition, and Land Recovery Grants. This analysis estimates potential future funding availability through the Land Acquisition grant program. Over each of the past three fiscal years, the USFWS has made available, on average, more than \$58 million in land acquisition funds nationally. Of this, an average of approximately 41 percent – nearly \$24 million – was dedicated for land acquisition for HCPs in California, with over 80 percent of the California share going to large regional HCPs in the southern portion of the State.

EPS surveyed the four regional northern California HCPs that received funding over the last 3 years, and estimated that on average, each HCP received approximately \$700,000 annually.¹ In order to account for increased competition due to additional HCPs and potential decreases in section 6 funding, this analysis assumes that the East Contra Costa NCCP/ HCP will receive half of this historical average – roughly \$350,000 annually, or \$10.5 million over 30 years. As shown in **Table 3**, such grants would fund about four percent of overall acquisition funding requirements and could be used to acquire approximately 1,250 acres at average land costs.

PUBLIC AND PRIVATE TRUST LAND ACQUISITION

A number of public and private entities have historically been involved in land acquisition in the Plan Area, including the East Bay Regional Park District (EBRPD), the California Department of Parks and Recreation (CDPR), the Contra Costa Water District (CCWD), the Trust for Public Land, and Save Mount Diablo, to name a few. This section describes historical acquisition trends by several of these entities in an attempt to generate an estimate of likely future land purchases. It should be noted that acquisition by these agencies is highly dependent on funding availability, which varies year-to-year and cycle-to-cycle; average rates are therefore more useful in estimating acquisition over the long-term rather than forecasting purchases in any given year.

- **East Bay Regional Park District.** Historically, the EBRPD has been the most active of the organizations mentioned above in terms of land acquisition for open space preservation in the vicinity of the Plan Area. The EBRPD provided records of historical land acquisition in the vicinity of the HCP planning area since 1971. According to these records, the EBRPD has acquired, on average, approximately 500 acres of land within the proposed HCP planning area each year through 1999.

¹ Northern California HCPs that received Section 6 land acquisition grants included San Bruno (San Mateo County), Ohlone Shell Mound (San Mateo County), Echilet Ranch (San Joaquin County), and Natomas Basin (Sacramento County).



- **California Department of State Parks.** The CDSP has also historically acquired significant amounts of open space in the vicinity of the Plan Area. For example, their acquisitions have expanded Mt. Diablo State Park from approximately 7,000 acres 30 years ago to its current size of approximately 20,000 acres – an average annual acquisition rate of more than 400 acres per year. In January 2003, the California Department of Parks and Recreation (with support from many organizations, including the Trust for Public Land) also acquired Cowell Ranch, a 4,000 acre property inside the Plan Area that will be set aside for open space and dispersed recreation.
- **Contra Costa Water District.** The CCWD has purchased roughly 20,000 acres in the last 15 years for reservoir construction and watershed protection purposes. Since it now owns all or virtually of Los Vaqueros Reservoir watershed, no future protection watershed acquisitions can be expected. However, in conjunction with CALFED, the CCWD is currently investigating the possibility of expanding Los Vaqueros reservoir, which would include the inundation of between 1,600 and 2,600 acres, and would likely also require the acquisition of mitigation acres in the vicinity of the Plan Area. The CCWD is still in the early planning stages, however, and no specific estimates of the number of future mitigation acres are available.
- **Private Land Trusts.** Organizations such as the Trust for Public Land and Save Mount Diablo are also actively involved in land preservation and acquisition in the Plan Area, though they often facilitate transfers rather than acquire land themselves. For example, the Trust for Public land brokered the Cowell Ranch purchase in association with the CDSP. Save Mount Diablo staff have indicated their organization has historically been involved in the purchase of between 1,000 and 2,000 acre per year, many within the Plan Area, but also indicated that a large portion of this estimate is in combination with acquisitions by the public agencies described above.

To account for rising land prices, more limited acquisition opportunities, and funding constraints, this analysis assumes that the public and private agencies described above will acquire future land in East Contra Costa at one-half the historical rate of the EBRPD, or roughly 250 acres per year. Given the number of agencies actively pursuing open space acquisition in the Plan Area, this is believed to be a conservative estimate of long-term future land contributions from public and private entities. According to this projection, public/private agencies would acquire nearly 7,600 acres of land in the HCP area over the next 30 years, or 25 percent of total acquisition goals. Assuming acquisitions at average land costs, this would represent the equivalent of a \$61 million, or 25 percent, contribution to the acquisition funding requirements as shown in **Table 3**. Though many of these entities would likely receive funding from the County's Open Space Funding Measure should it be put to a referendum and should it pass, acquisitions they make with those funds are included in the projection for the County Open Space Measure.

BYRON AIRPORT LAND ACQUISITION

Long term plans for the Byron Airport include acquiring neighboring parcels in order to secure an adequate "clear zone" in the vicinity of the airport runways. Staff have provided background information on acreage and purchase price estimates related to the clear zone acquisition goals for the airport. All areas of acquisition interest lie within the proposed HCP planning area and all are presently used primarily for grazing and are essentially undeveloped. This analysis assumes that



acquisition and conservation of these parcels for airport needs would also satisfy HCP conservation requirements. As shown in **Table 3**, approximately 800 acres of land has been estimated for clear zone acquisition at an expected cost of \$6.5 million, which represents roughly three percent of acquisition land and funding. The Federal Aviation Administration matches such airport-related acquisitions at a very high rate (9:1), but the possibility exists that, should the HCP provided any matching funds, clear zone acquisition goals would remain fixed but airport financial contributions would decrease slightly.

NET EFFECT OF ALTERNATIVE FUNDING SOURCES

This analysis estimates that the four funding sources described above could cover roughly 46 percent of the Plan's overall land acquisition goals and funding requirements. In particular, the sources could contribute to the acquisition of about 13,000 acres, equivalent to about \$97 million in acquisition value. This represents about 32 percent of overall Plan funding requirements. The remaining 17,000 acres, at a cost of about \$113 million, would have to be acquired through developer mitigation, additional grants and/or outside funds, or some other locally-approved funding source.

MITIGATION FEE FUNDING LIMITATIONS

Developer mitigation fees often contribute a significant proportion to NCCP/ HCP funding. The fee level is, however, generally limited by several considerations. This section addresses the limitations on the level of developer fees that may arise through considerations of fair share apportionment and financial feasibility.

FAIR SHARE APPORTIONMENT

The purpose of conservation efforts under NCCPs is to ensure the conservation of the species through the combination of existing and future conservation efforts. These conservation efforts as a whole ensure that despite the past and future incidental take of species, covered species are preserved and recover. Both past development and future development generate challenges for species recovery and, hence, should contribute towards conservation efforts.

One approach to evaluating the "fair share" contributions of past and new development is to compare existing conservation areas to developed areas and additional conservation areas to additional development areas under the Plan. **Table 1**, above, shows this comparison. As shown, existing conservation efforts, funded through a variety of sources and entities, have resulted in the conservation of 44,000 acres, a ratio of about 0.77 relative to the developed acres. The Draft Plan, itself, requires the conservation of an additional 30,000 acres and could permit an additional 11,000² acres of development, an overall ratio of 2.73, which is higher than the historical conservation ratio. In order to ensure new development pays approximately its "fair share", new conservation needs would need to be allocated between existing and new development such that they both end up contributing at the average ratio of 1.09, as shown in **Table 4**. Please note, the development and conservation figures used to arrive at this "fair share" apportionment are still

² Includes approximately 7000 acres of development of "natural" lands and 8000 acres of development on intensively farmed lands

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preliminary, reflect the assumption that existing intensively farmed lands should be considered 50% developed in the accounting, and that no attempt has been made to attempt to correct for idiosyncrasies of the data, such as the effect of the planning area boundary on the analysis.

Table 4: Preliminary “Fair Share” Apportionment

Item	Dev. Acres	Existing Cons.	New Cons.	Overall Ratio	Fair Share Percentage
Existing Dev.	57,000	44,000	18,000	1.09	60%
New Dev.	11,000	0	12,000	1.09	40%
Total	72,000	44,000	30,000	1.09	100%

As shown, in order for both existing development and new development to contribute an equal ratio of 1.09, about 18,000 of the 30,000 acre conservation needs, about 60 percent, must be funded by existing development. A maximum of 40 percent of Plan costs could be allocated to new development under this approach. While useful, as a general guide as well as for setting a maximum contribution level from new development, this 40 percent factor does not imply that as much as 40 percent of the costs should be funded through developer mitigation fees. A portion of the other funding from the sources mentioned above, including EBRPD funding and County Open Space Measure funding, will, over time and as new development occurs, also come from new development. As a result, this evaluation suggests that funding through developer mitigation fees should be below 40 percent.

FINANCIAL FEASIBILITY

Another limiting factor on the level of developer mitigation fees is the financial feasibility of development. The purpose of the NCCP/ HCP is not to make development infeasible, but rather to ensure recovery of the species and mitigation to the maximum extent practicable (in fact, many NCCP/HCPs attempt to be more cost-effective overall than the project-by-project approach to regulatory compliance). Financial feasibility analysis supports consideration of existing cost burdens on developers and the use of “industry standards” to determine the ability of average developments to bear additional cost burdens. In this case, cost burdens refer to the cost of backbone infrastructure as funded through development impact fees, school fees, special taxes, assessment districts, Mello-Roos Districts, and conditions of approval. As a “rule of thumb”, residential development projects may start to become infeasible if the per-unit backbone infrastructure costs increase above 15 percent of the market value of the unit. Depending on the specifics of the case, some residential projects may be able to carry cost burdens of up to 20 percent.

An evaluation of backbone infrastructure charges in the cities of Antioch, Oakley, Pittsburg, Clayton, and Brentwood reveal costs of between \$30,000 and \$50,000 per single family unit.³ The City of Oakley and Brentwood appear to have the highest costs in this range, in part due to their share of the SR4 bypass transportation project, and in part due to their greater focus on development impact fees and hence the easier measurement of infrastructure costs in these communities.

³ Impact fees are charged for drainage, sewer and water connection, transportation, parks, public safety, capital facilities, schools, child care, and general administration. Not all cities charge each of these fees.



A review of large, single family residential projects in East Contra Costa County cities, with a particular focus on Brentwood and Oakley, reveals that a residential prototype of a 2,500 square foot home on a 6,000 square foot lot (equivalent to about 6 units per gross acre), sells for \$350,000 per unit or above. As shown in **Table 5**, for the cheaper home of this type, the existing maximum cost burden of \$50,000 represents 14.3 percent of the sales price, leaving an additional \$2,500 per unit before the cost burden enters the 15 to 20 percent range. This is equivalent to a fee of \$15,000 per acre, based on 6 units per gross acre density. Developer mitigation fees above this level would push the cost burden on these units into the zone that may render some development projects infeasible, though it is worth noting that significant development continues despite the current cost burdens approaching the 15 percent level. Also, many units at this size and density command higher prices in the \$375,000 to \$400,000 range, and, thus, could bear additional burden.

Table 5: Financial Feasibility Test Cases

	Lower Price Home (existing fees only)	Lower Price Home (with new fee)	Higher Price Home (existing fees only)	Higher Price Home (with new fee)
Unit Value	\$350,000	\$350,000	\$375,000	\$375,000
Existing Burden	\$50,000	\$50,000	\$50,000	\$50,000
Fee per Unit	-	\$2,500	-	\$2,500
Fee per Acre	-	\$15,000	-	\$15,000
Percent	14.3%	15.0%	13.3%	14.0%

This illustrative evaluation suggests that the establishment of mitigation fees at significantly above \$15,000 per acre should be carefully evaluated in terms of its effect on the feasibility of single family residential development.

FUNDING SCENARIOS

The evaluations of non-fee and fee funding sources above permit the construction of a funding scenario under these limiting conditions. The purpose of these scenarios is to establish whether non-fee and fee funding as estimated/ limited in the above evaluations, and under certain sensitivity tests, can generate sufficient funding to cover the hypothetical costs of the Plan, or whether a funding gap remains. When accurate cost estimates are developed, the analysis will be adjusted to apply to the new costs.

Three separate funding scenarios are evaluated in **Table 6**. As shown, total Plan costs are assumed to be \$300 million under all scenarios. All scenarios presume “other entities” continue their acquisitions and funding at the “base” levels described above, equivalent to a contribution of approximately \$100 million. Scenarios vary by their assumption of the per-acre mitigation fee, as described below.

- **Scenario 1** assumes a per-acre fee of \$18,000, which is the fee necessary to close the funding gap entirely, assuming the fee is levied on 11,000 future developed acres. As discussed above, a fee greater than \$15,000 could potentially affect the financial feasibility of housing projects in the low end of the price spectrum (i.e., \$350,000 per unit



- or less).⁴ In addition, under this fee structure new development would contribute 67 percent of total Plan costs, which is more than its estimated “fair share” based on historical development and conservation ratios.
- **Scenario 2** assumes a fee of \$15,000 per acre, which corresponds to the maximum level that is not expected to affect project feasibility for lowest cost homes, given the home price and existing fee estimates discussed above.
 - **Scenario 3** assumes a fee of \$11,000 per acre, which is the resulting fee when new development contributes its fair share to total Plan costs, equal to 40 percent.

As shown in **Table 6**, *Scenario 1* is the only scenario that covers the full cost of the Plan. At this fee level, however, the feasibility of certain projects at the low-end of the price spectrum may be jeopardized, and new development ends up funding 67 percent of total Plan costs, which is more than its fair share. As shown in *Scenario 2*, a \$15,000 fee results in a \$35 million funding gap and causes new development to fund 55 percent of total Plan costs. A fee of this amount is not expected to affect project feasibility. Finally, *Scenario 3* shows that a fee of \$11,000 per acre, which is sufficient to fund a 40 percent contribution by new development, results in a funding gap of \$80 million.

Table 6: Hypothetical Funding Gap Analysis

Item	Scenario 1: No Funding Gap*	Scenario 2: Fee Set at Estimated Feasible Limit for \$350,000 home**	Scenario 3: “Fair Share” Apportionment***
Total Plan Costs	\$300m	\$300m	\$300m
Non-Fee Funding	\$100m	\$100m	\$100m
Remaining	\$200m	\$200m	\$200m
Fee per Acre****	\$18,000	\$15,000	\$11,000
Fee Funds	\$200m	\$165m	\$120m
Fee % of Total Cost	67%	55%	40%
Funding Gap	\$0	\$35m	\$80m

- * corresponds to the fee level required to eliminate the funding gap.
- ** corresponds to the estimated maximum fee from a feasibility perspective for a \$350,000 home with an existing fee burden of \$50,000, as described in more detail above.
- *** corresponds to the fee level at which new development funds its “fair share” (40%) (though the caveat remains that, once constructed, new households will be contributing the public funds attributed to “existing development”
- **** Assumes 11,000 acres of “development”; in other words, because of the assumptions of the analysis, a reduced fee for development of croplands/orchards is built in; a later decision will be needed as to whether such a tiered fee structure should be included in the HCP

As cost estimates are completed, funding scenarios are refined, and cost allocation decisions are being pursued in earnest, an evaluation of opportunities for closing any funding gaps in preferred scenarios will be performed.

⁴ A fee of \$18,000 per acre, or \$3,000 per unit, would result in a total cost burden of 15.14 percent for a unit priced at \$350,000, which is just greater than the 15 percent feasibility threshold described above.



Early Draft Text: Chapter 9 - Assurances

[Note: This is an early draft of key sections of Chapter 9 of the Preliminary Partial Draft East Contra Costa County HCP/NCCP. This early draft document is meant to elicit feedback on the concepts presented here.]

Assurances Requested by Permittees

No Surprises

The “No Surprises Policy” was issued by the Secretary of the Interior on August 11, 1994. It provides assurances to section-10 permit holders that no additional money, commitments, or restrictions of land or water are necessary should unforeseen circumstances requiring additional mitigation arise once the permit is in place. The Rule states that if a permit holder is properly implementing an HCP that has been approved by the Services, no additional commitment of resources, beyond that which is already specified in the plan, will be required. The Natural Communities Conservation Planning Act (NCCPA) includes similar provisions ensuring that “if there are unforeseen circumstances, additional land, water or financial compensation...shall not be required.”

The Permittees request regulatory assurances (no surprises) for all covered species in this Plan. In accordance with No Surprises, the Permittees will be responsible for implementing remedial measures in response to any changed

circumstances described in this Plan (see Chapter 6). The Permittees will not be responsible for addressing unforeseen circumstances, as described below.

Changed Circumstances

Changed circumstances are defined as those affecting a species or geographic area covered by the HCP that can be reasonably anticipated by the applicant or the FWS and to which the parties can plan a response. The Rule requires that potential changed circumstances be identified in the Plan along with measures that would be taken by the permittee to respond to those changes. The changed circumstances that could arise in the Plan Area have been identified and described in Chapter 6.

In the event of changed circumstances, the FWS may determine that additional conservation or mitigation measures are necessary. Pursuant to the No Surprises Rule, if such measures were addressed in the HCP, they will be implemented in the HCP. If such measures were absent from the HCP, the FWS will not require any additional conservation or mitigation without the consent of the permittee, as long as the HCP is found to be properly implemented. “Properly implemented” means the commitments and the provisions of the HCP and the EIS have been or are being fully implemented.

Unforeseen Circumstances

Unforeseen circumstances are changes affecting a species or geographic area covered by an HCP that were not or could not be anticipated by the permittee or the Services at the time of HCP negotiation. Unforeseen circumstances may result in a substantial and adverse change in the status of a covered species.

As described in the No Surprises Rule, it is the Services’ responsibility to demonstrate the existence of unforeseen circumstances using the best scientific and commercial data available. Should FWS adequately demonstrate the existence of unforeseen circumstances, they will work with the Permittees to modify the Plan in a way that addresses the unforeseen circumstance. Any modifications will maintain the original terms of the Plan to the maximum extent possible and will not require any additional commitment of resources by the Permittees.

Non-listed Species

Each species covered by the HCP/NCCP has been treated as though it is listed under ESA and CESA and will be included on the ITP from the USFWS. The permits will be effective for listed species immediately upon issuance. Should an unlisted species become listed during the permit term, take coverage will become effective for that species at the time of listing. No changes to the terms and

conditions of the IA or modifications to conservation measures are required. Under Section 2835 of the NCCPA, the CDFG may issue take for covered species, regardless of their listing status.

Should a species not covered by the Plan be listed, proposed, or petitioned for listing, the permittee may request that the FWS add the species to the ITP and/or the HCP. In determining whether or not to seek incidental-take coverage for the species the permittee will consider, among other things, if the species is present in the Plan Area and if otherwise lawful activities could result in incidental take of the species. If incidental take coverage is desired, the Plan would be modified and the permit amended. Alternatively, the permittee could apply for a new and separate permit. Procedures for amendments to the Plan are outlined in *Minor/Major Amendments* below.

Alternative Permitting Mechanisms

The HCP/NCCP is intended to allow take for covered activities throughout the Permit Area. In order to achieve this broad coverage, every attempt has been made to make the overall package of the HCP/NCCP, including fees and conditions on development, as attractive as possible to local applicants when compared to the cost and time involved in permitting an individual project. However, the Permittees recognize that some applicants may still wish to obtain their own permits separate from the HCP/NCCP. The Permittees seek assurances that participation in this Plan is voluntary and that the USFWS and CDFG will allow applicants to apply for their own ESA and CESA permits outside of the HCP/NCCP process, if desired.

Funding by State and Federal Agencies

As described in Chapter 8, implementation of this HCP/NCCP will be partially funded by State and Federal agencies including the USFWS and CDFG. The Permittees recognize that State and Federal funds cannot be guaranteed in advance of the approval of yearly budgets, or by agency staff that does not have the authority to commit these funds. However, the Permittees seek assurances that USFWS and CDFG will make every effort to assist the Implementing Entity in securing the funding outlined in Chapter 8 to help implement the HCP/NCCP.

Assurances to Private Landowners

Neighboring Landowner Assurances

This Plan calls for the acquisition of land and coordinated management of a Preserve System to the benefit of covered species. As a result of the Conservation Strategy described in the Plan, some populations of listed species are expected to

increase on the Preserve and elsewhere. Landowners adjacent to Preserves may be concerned that populations of federally or state-listed species on the Preserve may expand and colonize or use their lands, potentially restricting their land-use activities.

This Plan acknowledges that some additional take may result from spillover of Covered Species onto adjacent lands upon the successful implementation of the Conservation Strategy (see Chapter 4 for the impact analysis that includes this additional take) and has therefore developed neighboring landowner protections for property adjacent to the Preserve boundary. These protections provide incidental-take permit coverage on an “opt-in” basis for all agricultural lands within one-half mile of the boundary of any land or property acquired as habitat mitigation by the HCP/NCCP.

Terms and Conditions

The neighboring landowner protections offered under the Plan include the following:

- Agricultural lands within one-half mile of the Preserve System shall be covered for incidental take of federally or state-listed Covered Species under the Plan’s associated Section 10(a)(1)(B) and Section 2081(b) permits, should any such lands become inhabited by or be used by covered Species after establishment of the Preserve System.
- Coverage under the incidental take permits shall be offered to neighboring lands actively being used for agricultural purposes at the time that the adjacent HCP/NCCP preserve is established. For purposes of this Plan, “agricultural” means crop-production, animal production, forage production, and grazing activities; and “actively being used for” means lands on which usual and customary agricultural practices are occurring at the time the neighboring HCP/NCCP preserve is established. For example, if agricultural lands that are used for production of crops lie fallow at the time the neighboring HCP/NCCP preserve is established, in accordance with normal crop-rotation practices, those lands would be considered to be actively used for agricultural purposes. Such coverage shall continue, subject to the terms and conditions of the Plan, the IA, and the incidental take permits for as long as the neighboring lands are actively being used for agricultural purposes and the permits remain in effect. Neighboring landowner coverage will not be offered for neighboring lands devoted to non-agricultural purposes at the time the mitigation lands are established.
- Neighboring-landowner coverage under the ITPs will be extended only to individuals or populations of Covered Species that colonize the neighboring lands after establishment of the adjacent HCP/NCCP preserve. Take coverage will not be provided for individuals or populations of covered species that inhabit the neighboring lands prior to the establishment of the Preserve.

- Upon establishment of the Preserve, the Implementing Entity shall send a letter to each neighboring landowner within one-half mile of the Preserve boundary whose lands are actively used for agricultural purposes. The letter will explain the ECCC HCP/NCCP and the landowner's eligibility for coverage under the Plan's ITPs. Landowners who are interested in receiving this coverage will respond to the HCP/NCCP Implementing Entity. Prior to receiving coverage under the Plan, the environmental baseline must be determined. Landowners will have the option of allowing biologists with the HCP/NCCP Implementing Entity to survey their property at no cost, or hiring their own consultants to survey their property.
- The survey report will address the zone of neighboring landowner protections and will include, at a minimum, a description of habitat for covered species (extent, quality), records of covered species, and observations of covered species within that area. Upon receipt of an approved biological report and a "Certificate of Inclusion" signed by the landowner, the Implementing Entity will grant take coverage to the landowner under this program.
- The Implementing Entity shall maintain a record of all correspondence and Certificates of Inclusion sent to neighboring landowners subject to these protections, as well as signed Certificates of Inclusion returned by landowners. The Implementing Entity will notify FWS and DFG annually of the number, location, and size of neighboring lands entered into the program. Copies of the Certificates will be provided to FWS and DFG upon request.

Public Access to Conservation Easements Held by Private Landowners

It is not the intent of the IE to allow general public access on conservation easements that are part of the HCP/NCCP Preserve System, unless a trail access is an explicit component of the conservation easement. Public access on private lands managed under the HCP/NCCP could conflict with on-going agricultural operations and could pose a safety risk to the public. Public access to conservation easements could also pose a risk of unwanted trespass onto adjacent, privately held lands. Generally, the IE will discourage public access on conservation easements except in cases where a regional trail connection may be needed. Public access to conservation easements will only be permitted with the consent of the landowner.